

## Update: Domestic Violence Benchbook (3rd ed)

### CHAPTER 3

#### Common “Domestic Violence Crimes”

#### 3.14 Other Crimes Commonly Associated with Domestic Violence

##### A. Offenses Against Persons

##### 6. Kidnapping

Effective August 24, 2006, 2006 PA 159 rewrote MCL 750.349 in its entirety. Insert the following **Note** after the first bullet at the top of page 106:

**Note:** The applicability and content of the Criminal Jury Instructions and case law cited above may be affected by 2006 PA 159, which amended MCL 750.349, effective August 24, 2006.

## CHAPTER 3

### Common “Domestic Violence Crimes”

#### 3.14 Other Crimes Commonly Associated with Domestic Violence

##### A. Offenses Against Persons

##### 12. Unlawful Imprisonment

Effective August 24, 2006, 2006 PA 160 added a new crime, unlawful imprisonment, to the Michigan Penal Code. Insert a new sub-subsection as indicated after the March 2006 update to page 108:

A person who knowingly restrains another person under any of the following circumstances has committed the crime of unlawful imprisonment:

- use of a weapon or dangerous instrument to restrain the person.
- the person restrained was secretly confined.
- the person was restrained in order to facilitate the commission of another felony or to facilitate flight after another felony was committed. MCL 750.349b(1)(a)–(c).

The crime of unlawful imprisonment is a felony punishable by not more than 15 years of imprisonment or a fine of not more than \$20,000.00, or both. MCL 750.349b(2). In addition, a defendant may be charged with, convicted of, or sentenced for any other violation of law occurring during the defendant’s commission of the unlawful imprisonment violation. MCL 750.349b(4).

##### 13. Human Trafficking

Effective August 24, 2006, 2006 PA 162 added a new chapter to the Penal Code—Chapter LXVIIA contains a group of new crimes involving forced labor or services, criminal sexual conduct, or child sexually abusive activity. Insert a new sub-subsection as indicated immediately following the new sub-subsection (12) added above:

MCL 750.462b makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by causing or threatening to cause physical harm to another person.

MCL 750.462c makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by physically restraining or threatening to physically restrain another person.

MCL 750.462d makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by abusing or threatening to abuse the law or legal process.

MCL 750.462e makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or any other actual or purported government identification document of another person.

MCL 750.462f makes it a felony to knowingly subject or attempt to subject another person to forced labor or services by using blackmail, using or threatening to cause financial harm to, or exerting or threatening to exert financial control over another person.

MCL 750.462g makes it a felony to knowingly recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, provide, or obtain by any means, a minor knowing that the minor will be used for child sexually abusive activity.

MCL 750.462h makes it a felony to recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, transport, provide, or obtain by any means another person, intending or knowing that the person will be subjected to forced labor, and to benefit financially or receive anything of value from participation in a venture that has engaged in one of these acts.

Violations of MCL 750.462b–750.462f and MCL 750.462h all are subject to the same punishment scheme:

- ♦ Simple violation of any of these statutes is punishable by imprisonment for not more than ten years.
- ♦ Violation of any of these statutes resulting in injury to another person is punishable by imprisonment for not more than 15 years.
- ♦ Violation of any of these statutes resulting in the death of another person is punishable by imprisonment for life or any term of years.

Violation of MCL 750.462g is punishable by imprisonment for not more than 20 years.

MCL 750.462i provides that if a violation of MCL 750.462b–750.462h involves kidnapping or an attempt to kidnap, criminal sexual conduct or an attempt to commit criminal sexual conduct, or an attempt to kill, that violation is punishable by imprisonment for life or any term of years.

The following definitions apply to the statutes discussed above:

- ♦ **“Child sexually abusive activity”** means “a child engaging in a listed sexual act.” MCL 750.462a(a), MCL 750.145c.
- ♦ **“Commercial sexual activity”** means “[a]n act of sexual penetration or sexual contact as those terms are defined in [MCL 750.]520a for which anything of value is given or received by any person” or any conduct prohibited under MCL 750.145c(2) or (3) (creation, production, distribution, promotion, etc. of child sexually abusive material). MCL 750.462a(b).
- ♦ **“Extortion”** means conduct prohibited under MCL 750.213, “including, but not limited to, a threat to expose any secret tending to subject a person to hatred, contempt, or ridicule.” MCL 750.462a(c).
- ♦ **“Financial harm”** means criminal usury as prohibited by MCL 438.41, extortion, employment contracts in violation of the wage and benefit provisions in MCL 408.471 to 408.490, or any other adverse financial consequence. MCL 750.462a(d).
- ♦ **“Forced labor or services”** means labor or services obtained or maintained by conduct described in at least one of the following provisions:
  - causing/threatening to cause serious physical harm to another person.
  - physically restraining/threatening to physically restrain another person.
  - abusing/threatening to abuse the law or legal process.
  - knowingly destroying, concealing, removing, confiscating, or possessing another person’s actual or purported passport or other immigration document, or any other government identification document.
  - blackmail.
  - causing/threatening to cause financial harm to any person. MCL 750.462a(e).
- ♦ **“Labor”** means work having economic or financial value. MCL 750.462a(f).
- ♦ **“Maintain,”** as it relates to labor or services, means “to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform the labor or services.” MCL 750.462a(g).
- ♦ **“Minor”** means a person under the age of 18. MCL 750.462a(h).

- ♦ **“Obtain”** means securing the performance of labor or services. MCL 750.462a(i).
- ♦ **“Services”** means “an ongoing relationship between a person and another person in which the other person performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.” MCL 750.462a(j).

## CHAPTER 9

### Statutory Firearms Restrictions in Domestic Violence Cases

#### 9.2 Definitions

Insert the following text after the quote of MCL 28.421(b) and MCL 750.222(d) near the middle of page 397:

A weapon need not be operable or reasonably or readily operable in order to constitute a “firearm” under MCL 750.222(d). *People v Peals*, \_\_\_ Mich \_\_\_, \_\_\_ (2006). Rather, the statutory definition “requires only that the weapon be of a type that is designed or intended to propel a dangerous projectile.” *Id* at \_\_\_. It is “the design and construction of the weapon, rather than its state of operability” that are relevant in determining whether a weapon is a “firearm.” *Id.* at \_\_\_.